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Michael D. Lansky and Stacey S. Reeves

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

State of Arizona, ex rel. Kristin K. Mayes	)	
Attorney General et al.	)	
	)	
Plaintiffs	)	
	)	
v.	)	Case No. 4:23-cv-00233-EJM
	)	
Michael D. Lansky, LLC, dba	)	
Avid Telecom, an Arizona	)	
Limited Liability Company;	)	
	)	
Michel D. Lansky, individually	)	
As a Member/Manager/Chief	)	
Executive Officer of Michael D.	)	
Lansky, LLC dba Avid Telecom;	)	
and	)	
	)	
Stacey S. Reeves, individually as	)	
a Manager/Vice President of	)	
Michael D. Lansky LLC dba	)	
Avid Telecom	)	
	)	
Defendants.	)	

**Table of Contents**

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. ARGUMENT .....</b>	<b>1</b>
<b>a. Rule 34 Violations &amp; Waiver of Objections.....</b>	<b>1</b>
<b>b. Failure to Comply With Rule 34(b)(2)(C) Requirements .....</b>	<b>3</b>
<b>c. Inadequate Boilerplate Objections.....</b>	<b>4</b>
<b>d. Non-Compliance with ESI Order.....</b>	<b>5</b>
<b>III. FAILURE TO MEET &amp; CONFER .....</b>	<b>5</b>
<b>IV. CONCLUSION .....</b>	<b>5</b>

**Table of Authorities****Cases**

<i>John Doe 1, et al. v. Swift Transportation Co., Inc., et al.</i> , No. CV-12-01629-PHX-NVW (D. Ariz. July 15, 2015).....	3
<i>Osborn v. Bartos</i> , 2010 U.S.Dist.LEXIS 114119, Arizona District Court (September 17, 2010).....	3
<i>Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship</i> , 507 U.S. 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993).....	3

**Statutes**

Rule 30(b)(6).....	4
Rule 34(b)(2)(B)-(C) .....	4

## 1                   **RESPONSE TO PLAINTIFF'S MEET AND CONFER BRIEF**

## 2

### 3                   **I. INTRODUCTION**

### 4

5                   Defendants Michael D. Lansky, L.L.C., d/b/a Avid Telecom, Michael D. Lansky, and  
6                   Stacey S. Reeves (collectively, "Defendants") respectfully submit this Opposition to Plaintiffs'  
7                   Opening Brief on Discovery Disputes ("Opening Brief").

8                   Plaintiffs' allegations of noncompliance and obstruction are unfounded and distort the  
9                   parties' discovery communications, the scope of requests, and Defendants' efforts to cooperate  
10                  in a complex, multi-state consumer protection action. Rather than an attempt to fairly resolve  
11                  disputes, Plaintiffs' motion seeks to impose overbroad, unduly burdensome obligations and to  
12                  cast routine, justified objections as sanctionable conduct. The record demonstrates Defendants'  
13                  good faith participation, continued offer to confer substantively, and appropriate invocation of  
14                  well-established privileges.

15                  To be clear, *Defendants are not withholding any documents based on a stated objection*  
16                  *or privilege nor have they refused to comply with any other discovery request.* Plaintiffs, who  
17                  have at least 25x the number of attorneys who have filed appearances, cannot say the same.

### 18                  **II. ARGUMENT**

### 19

#### 20                  **a. Rule 34 Violations & Waiver of Objections**

#### 21

22                  Plaintiffs' Opening Brief alleges three violations regarding Rule 34: (i) Avid Telecom  
23                  was required to respond by March 24, 2025; Defendants Lansky and Reeves by April 7, 2025,  
24                  but none provided timely responses; (ii) Avid Telecom and Reeves have waived any objections  
25                  to Plaintiffs' Requests pursuant to Rule 34(b)(2); and (iii) Reeves' and Defendant Avid

1      Telecom's Responses were not received until July 21, 2025, and July 22, 2025, respectively—  
 2      more than two months after deadline.

3           Defendants' discovery responses were initially due April 7, 2025. Defendants missed  
 4      discovery deadlines due to the unanticipated emergency hospitalization of Defendants' counsel  
 5      managing day-to-day discovery issues. Defendants provided their first discovery responses  
 6      shortly after counsel was released from the hospital. While counsel believed it had sent separate  
 7      responses for each Defendant, apparently, due to a document naming issue, it mistakenly sent  
 8      the same response (for Avid Telecom) for all three sets of requests. When Plaintiffs brought  
 9      the matter to the attention of Defendants' counsel, responses for Reeves and Lansky were  
 10     provided.<sup>1</sup>

11        At most, the delay in responding must be viewed as "excusable neglect". The  
 12      determination of "excusable neglect" is an equitable one, taking account of all relevant  
 13      circumstances surrounding the party's omission, including any negative impact on judicial  
 14      proceedings, whether the delay was within the reasonable control of the movant, and whether  
 15      the movant acted in good faith. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*,  
 16      507 U.S. 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993). All of these factors favor a finding  
 17      that the delay here was excusable. Moreover, an attorney's failure to respond in a timely  
 18      manner due to a serious illness has generally been considered "excusable".<sup>2</sup>

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<sup>1</sup> While a mistake was made in attaching the proper files to the email, given the extreme similarity (indeed, the virtual identify of the requests to Lansky and to Avid Telecom), the short delay in producing three separate responses—early in the discovery window--created little if any actual delay in the progress of the discovery process.

<sup>2</sup> The Supreme Court, Lockwood, J., held that failure of plaintiff's counsel to prevent dismissal of action for failure to have matter set for trial constituted 'excusable neglect', where counsel had been

1                   **b. Failure to Comply With Rule 34(b)(2)(C) Requirements**

2                   A recurring issue in this litigation arises from Plaintiffs' use of undefined, ambiguous  
 3 terms such as "illegal," "actual knowledge," and "actual authority." Requesting "all  
 4 documents" relating to billions of calls (many of which Plaintiffs themselves cannot  
 5 specifically identify) imposes an extreme, disproportionate burden, especially considering the  
 6 minimal relevance or utility of much of the requested information. As noted in Defendants'  
 7 July 17th letter, boilerplate requests divorced from a proper factual predicate are themselves  
 8 improper. *See e.g., John Doe 1, et al. v. Swift Transportation Co., Inc., et al.*, No. CV-12-01629-  
 9 PHX-NVW (D. Ariz. July 15, 2015).

10                  Further, Plaintiffs have not demonstrated why the already substantial productions—  
 11 including ESI responsive to targeted requests—are inadequate. Their position would convert  
 12 the Federal Rules' discovery framework into a limitless fishing expedition, undermining both  
 13 proportionality and fairness.

14                  Even assuming *arguendo* some objections were untimely, FRCP 33(b)(4) provides that  
 15 objections are waived unless the court, for good cause, excuses the failure. Courts have broad  
 16 discretion to excuse technical violations where, as here, Defendants have shown good faith  
 17 efforts to comply and no prejudice has resulted to Plaintiffs. Again, even if justified, Plaintiffs'  
 18 focus on this issue is not substantive, as Defendants (unlike Plaintiffs) are not withholding any  
 19 documents based on a stated objection. *See Osborn v. Bartos*, 2010 U.S.Dist.LEXIS 114119,  
 20 Arizona District Court (September 17, 2010).

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assertedly stricken with Valley Fever and such illness temporarily affected his ability to manage his office and conduct his practice. *See Walker v. Kendig*, 107 Ariz. 510, 489 P.2d 849 (1971)

1           **c. Inadequate Boilerplate Objections**

2           Plaintiffs' Opening Brief wrongly insists that any objection not accompanied by  
3           exhaustive factual content is "boilerplate." To the contrary, federal precedent and local practice  
4           generally require specificity and clarity—not endless exposition, especially when Plaintiffs'  
5           own definitions are far from clear. Defendants' objections specify the basis on which categories  
6           of requests are overbroad, unduly burdensome, or vague, and, as required by Rule 34(b)(2)(B)-  
7           (C), indicate whether responsive material is being withheld.<sup>3</sup> Additionally, Plaintiffs' assertion  
8           that privilege objections are "unsubstantiated" is misplaced. Where privileged or protected  
9           information exists, Defendants are prepared to produce a privilege log in the normal course and  
10           upon meaningful identification of potentially responsive documents. There is no basis to require  
11           immediate, exhaustive logs regarding productions that Plaintiffs cannot describe with precision.

12           To date, Defendants have not withheld any documents on the basis of privilege. This  
13           fact has been communicated to Plaintiffs. Plaintiffs, in contrast, have refused to produce a  
14           privilege log on the absurd claim that it is not time to do so and they have yet to state when one  
15           will be produced and if any documents have been withheld on this basis.

16  
17  
18

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<sup>3</sup> Plaintiffs' objections on this basis are disingenuous in the extreme—bordering of the outrageous and  
frivolous—given they have asserted generic objections to virtually every one of Defendants'  
requests—including every one of Defendants' requests for depositions under Rule 30(b)(6) and, unlike  
Defendants who have said that no documents are being withheld, to this date have failed and refused  
to so represent.

1                   **d. Non-Compliance with ESI Order**

2  
3                   On or around July 11, 2025, defense counsel provided its first document production as  
4 to Defendant Reeves – around 320 documents in total. While there were initial formatting issues  
5 with Bates numbering due to technical issues with Defendants' industry-leading (NextPoint)  
6 document program, this problem was resolved through a coordinated effort of counsel's  
7 document expert and the technical staff at NextPoint. As no pleadings that required reference  
8 to Bates numbers were due during this period, and Plaintiffs had the documents in hand during  
9 the correction process, Plaintiffs suffered no conceivable prejudice. Defendants expect to  
10 produce a large additional tranche of documents this week.

11                  **III. FAILURE TO MEET & CONFER**

12                  Given the procedural posture and Defendants' ongoing work to comply, Plaintiffs'  
13 request for sanctions is not only premature, but also disproportionate.<sup>4</sup> The case law cited by  
14 Plaintiffs relates to willful non-compliance and bad faith, neither of which is present here.  
15 Defendants continue to seek a practical resolution and request that this Court order the parties  
16 to further confer on narrowly tailored, clearly defined discovery requests, reserving judicial  
17 intervention for genuinely intractable disputes.

18                  **IV. CONCLUSION**

19                  Federal courts in Arizona recognize that discovery sanctions should not be imposed  
20 where parties demonstrate good faith compliance efforts. Here, Defendants have: (i) stipulated

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<sup>4</sup> Given the material, continuing and apparently willful violations of their discovery obligations by Plaintiffs, Defendants would support the appointment of a discovery referee, with any associated costs paid by the Plaintiffs or shared by the parties.

1 to reasonable extensions; (ii) produced documents, with more to be produced this week; (iii)  
2 participated in the meet and confer process; (iv) actively worked to address technical ESI Order  
3 requirements; (v) not delayed such that Plaintiffs can demonstrate any actual prejudice from  
4 the timing of issues.

5 Discovery remains ongoing, and Defendants are actively producing responsive  
6 materials. Defendants respectfully submit that Plaintiffs' characterization of "obstruction" and  
7 "delay" is unsupported by the record. Defendants have engaged in good faith efforts to comply  
8 with discovery obligations, stipulated to reasonable extensions, and are actively producing  
9 responsive documents. Any technical violations should be excused under the good cause  
10 standard, particularly given the complexity of the requests and Defendants demonstrated  
11 commitment to compliance.

12 Plaintiffs, continue to refuse to produce a privilege log, assert boilerplate and insufficient  
13 bases for objections and discovery requests, and refuse to identify witnesses for deposition.  
14 Defendants are producing documents while Plaintiffs withhold documents without explanation  
15 or agreement to meet and confer. If any party should be subject to sanctions, it is the Plaintiffs.

16 For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs'  
17 request for relief as set forth in the Opening Brief and direct the parties to meaningfully confer  
18 in good faith to resolve any remaining disputes in accordance with the Federal Rules of Civil  
19 Procedure.

Respectfully submitted,

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*Attorneys for Defendants*

Dated: September 8, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of September 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to all CM/ECF registrants

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Ritesh

Warikallamath